IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of:	)	Confirmation No.: 7953
Vincent H. TIEU, et al.	)	Group Art Unit: 3621
Serial No. 10/712,268	)	Examiner: Pierre E. Elisca
Filed: November 14, 2003	)	
For: SYSTEM AND METHOD FOR GRANTING ACCESS TO AN ITEM OR PERMISSION TO USE AN ITEM BASED ON CONFIGURABLE CONDITIONS	))	Date: January 15, 2008

APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 35 U.S.C. § 134 and 37 C.F.R. § 41.37, Appellants submit this Appeal Brief in support of the Notice of Appeal filed October 15, 2007, to appeal the Examiner's final rejections in the Final Office Action of June 14, 2007, and in response to Advisory Action of December 11, 2007.

I.   REAL PARTY IN INTEREST

ContentGuard, Inc. is the assignee and real party in interest.

II.   RELATED APPEALS AND INTERFERENCES

There are presently no appeals or interferences known to the Appellants, the Appellants' representative, or the assignee, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III.   STATUS OF CLAIMS

For the purposes of this Appeal, claims 1-3 and 5-40 are pending, and claim 4 is canceled. Thus, this Appeal is taken from the rejection of claims 1-3 and 5-40, as set forth in the Claims Appendix submitted herewith.

IV.   STATUS OF AMENDMENTS

No claim amendments have been made subsequent to the Final Office Action of June 14, 2007.

V.   SUMMARY OF CLAIMED SUBJECT MATTER

This Appeal is taken from claims 1-3 and 5-40, of which claims 1, 37, and 40 are independent.

Independent claim 1 relates to a computer-implemented method for processing plural rights expressions associated with an item for use in a system for controlling use of the item in accordance with the rights expressions, (See, for example, Fig. 18, and the discussions that follow in at least paragraph [0135] of the originally filed specification), the method comprising receiving a request to use the item, the item having associated rights expressions governing use of the item; (See, for example, Fig. 18, and the discussions that follow in at least paragraph [0135] of the originally filed specification), returning one or more rights expressions including one or more conditions that must be satisfied in order to use the item; (See, for example, Fig. 18, and the discussions that follow in at least paragraph [0135] of the originally filed specification), and processing the returned rights expressions in a manner to facilitate selection of the returned rights expressions in order to use the item in accordance with the selected rights expressions, (See, for example, Fig. 18, and the discussions that follow in at least paragraph [0135] of the originally filed specification), and including prioritizing the returned rights expressions based on the one or more conditions of the returned rights expressions, so as to facilitate selection of the returned rights expressions. (See, for example, Fig. 18, and the discussions that follow in at least paragraph [0135] of the originally filed specification).

Independent claim 37 relates to a system for processing plural rights expressions associated with an item for controlling use of the item in accordance with the rights expressions, (See, for example, Fig. 18, and the discussions that follow in at least paragraph [0135] of the originally filed specification), the system comprising means for receiving a request to use the item, the item having associated rights expressions governing use of the item; (See, for example, Fig. 18, and the discussions that follow in at least paragraph [0135] of the originally filed specification), means for returning one or more rights expressions including one or more conditions that must be satisfied in order to use the item; (See, for example, Fig. 18, and the discussions that follow in at least paragraph [0135] of the originally filed specification), and means for processing the returned rights expressions in a manner to facilitate selection of the returned rights expressions in order to use the item in accordance with the selected rights expressions, (See, for example, Fig. 18, and the discussions that follow in at least paragraph [0135] of the originally filed specification), and including means for prioritizing the returned rights expressions based on the one or more conditions of the returned rights expressions, so as to facilitate selection of the returned rights expressions, (See, for example, Fig. 18, and the discussions that follow in at least paragraph [0135] of the originally filed specification).

Independent claim 40 relates to a device for processing plural rights expressions associated with an item for controlling use of the item in accordance with the rights expressions, (See, for example, Fig. 18, and the discussions that follow in at least paragraph [0135] of the originally filed specification), the device comprising means for receiving a request to use the item, the item having associated rights expressions governing use of the item; (See, for example, Fig. 18, and the discussions that follow in at least paragraph [0135] of the originally filed specification), means for returning one or more rights expressions including one or more conditions that must be satisfied in order to use the item; (See, for example, Fig. 18, and the discussions that follow in at least paragraph [0135] of the originally filed specification), and means for processing the returned rights expressions in a manner to facilitate selection of the returned rights expressions in order to use the item in accordance with the selected rights expressions, (See, for example, Fig. 18, and the discussions that follow in at least paragraph [0135] of the originally filed specification), and including means for prioritizing the returned rights expressions based on the one or more conditions of the

returned rights expressions, so as to facilitate selection of the returned rights expressions, (See, for example, Fig. 18, and the discussions that follow in at least paragraph [0135] of the originally filed specification).

VI.   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The ground of rejection to be reviewed on appeal is the rejection of claims 1-3 and 5-40 under 35 U.S.C. § 102(e) as being anticipated by Levitt et al. (U.S. Patent Application Publication No. 2002/009544).

VII.   ARGUMENTS

Claims 1-3 and 5-40 are not anticipated under 35 U.S.C. § 102(e) by Levitt et al.

As was pointed out to the Examiner in the Response After Final filed on October 15, 2007, Appellants are unsure about the Examiner's basis for rejecting these claims in view of Levitt. In particular, in making the rejection, the Examiner asserts that "Gilliam et al" teaches the claimed invention. In the hopes of furthering prosecution of this application, Appellants responded to the rejection based on the disclosure of Levitt in the obvious hopes that the Examiner would allow the case, and if not, that the Examiner would at least provide reasoning in view of Levitt rather than "Gilliam et al." However, the Examiner has maintained the rejection in view of Levitt, and has unfortunately not provided any further comments regarding this issue in the Advisory Action. Appellants suspect that this lack of further reasoning, and the extreme brevity of the Advisory Action, is a result of the transfer of this case from Examiner Firmin Backer to Examiner Pierre Elisca.

As indicated above, independent claim 1 recites a computer-implemented method for processing plural rights expressions associated with an item for use in a system for controlling use of the item in accordance with the rights expressions, the method comprising receiving a request to use the item, the item having associated rights expressions governing use of the item, returning one or more rights expressions including one or more conditions that must be satisfied in order to use the item, and processing the returned rights expressions in a manner to facilitate selection of the returned rights expressions in order to use the item in accordance with the selected rights expressions, and including prioritizing the returned rights

expressions based on the one or more conditions of the returned rights expressions, so as to facilitate selection of the returned rights expressions.

Similarly, independent claim 37 recites a system for processing plural rights expressions associated with an item for controlling use of the item in accordance with the rights expressions, the system comprising means for receiving a request to use the item, the item having associated rights expressions governing use of the item, means for returning one or more rights expressions including one or more conditions that must be satisfied in order to use the item, and means for processing the returned rights expressions in a manner to facilitate selection of the returned rights expressions in order to use the item in accordance with the selected rights expressions, and including means for prioritizing the returned rights expressions based on the one or more conditions of the returned rights expressions, so as to facilitate selection of the returned rights expressions.

Furthermore, independent claim 40 recites a device for processing plural rights expressions associated with an item for controlling use of the item in accordance with the rights expressions, the device comprising means for receiving a request to use the item, the item having associated rights expressions governing use of the item, means for returning one or more rights expressions including one or more conditions that must be satisfied in order to use the item, and means for processing the returned rights expressions in a manner to facilitate selection of the returned rights expressions in order to use the item in accordance with the selected rights expressions, and including means for prioritizing the returned rights expressions based on the one or more conditions of the returned rights expressions, so as to facilitate selection of the returned rights expressions.

Thus, the pending claims relate to digital rights management (DRM) technology, and include features for rights expression language (REL) interpretation and/or processing. More particularly, the claims relate to an efficient mechanism to identify applicable licenses for meeting users' requirements.

In contrast, <u>Levitt merely relates to a system and method for *speech recognition*, and does not relate to DRM in any noteworthy capacity.</u>

In particular, Levitt discloses "grammar expressions" may be played back to users, and that they may be "prioritized and conditionally outputted to a user based on the score." The grammar expressions of Levitt are not components of a DRM system, but are instead tools used to recognize user utterances. (Paragraphs [0009]-[0011]). For example, Levitt discloses a method for "recognizing utterances utilizing the database of grammars." (Paragraph [0162]). In addition, "various grammars recognized from utterance components are combined to make intelligent guesses about what the user is saying." (Paragraph [0168]).

Levitt completely fails to disclose or suggest each and every feature of the invention as recited in the claims. For example, there is no disclosure whatsoever in Levitt relating to "processing plural rights expressions associated with an item for use in a system for controlling use of the item in accordance with the rights expressions," as is recited in the claims. Moreover, Levitt fails to disclose or suggest "receiving a request to use an item, the item having associated rights expressions governing use of the item," as is recited in the claims. Furthermore, Levitt fails to disclose or suggest "returning one or more rights expressions including one or more conditions that must be satisfied in order to use the item," as is recited in the claims. Also, Levitt fails to disclose or suggest "processing the returned rights expressions in a manner to facilitate selection of the returned rights expressions in order to use the item in accordance with the selected rights expressions," as is recited in the claims. Finally, Levitt fails to disclose or suggest "prioritizing returned rights expressions based on one or more conditions of the returned rights expressions, so as to facilitate selection of the returned rights expressions," as is recited in the claims.

The claimed features of the invention are clearly set forth and described in the originally filed specification at least in Fig. 18 (which is a flowchart for illustrating the operation of the Configurable Condition Processing System of FIG. 14, according to an exemplary embodiment), and related discussions and descriptions in paragraph [0135], which provides:

> FIG. 18 is a flowchart for illustrating the operation of the Configurable Condition Processing System 1400 of FIG. 14, according to an exemplary embodiment. In FIG. 18, a method, system, device, and/or computer program product can be configured for processing plural rights expressions associated with an item for use in a system for controlling use of the item

in accordance with the rights expressions, including, at step 1802, receiving a request to use an item, the item having associated rights expressions governing use of the item. At step 1804, one or more rights expressions including conditions that must be satisfied in order to use the item are returned. At step 1806, the returned rights expressions are processed in a manner to facilitate selection of the returned rights expressions in order to use the item in accordance with the selected rights expressions, for example, including the exemplary filtering processes, weighting processes, prioritizing processes, and the like, of the exemplary embodiments described with respect to FIGS. 1-17. At step 1808, conditions associated with the selected rights expressions in using the item are validated.

RECEIVE REQUEST TO USE ITEM
1802

RETURN ONE OR MORE RIGHTS EXPRESSIONS ASSOCIATED WITH ITEM   1804

PROCESS RIGHTS EXPRESSIONS, E.G., BY FILTERING, WEIGHTING, AND/OR PRIORITIZING
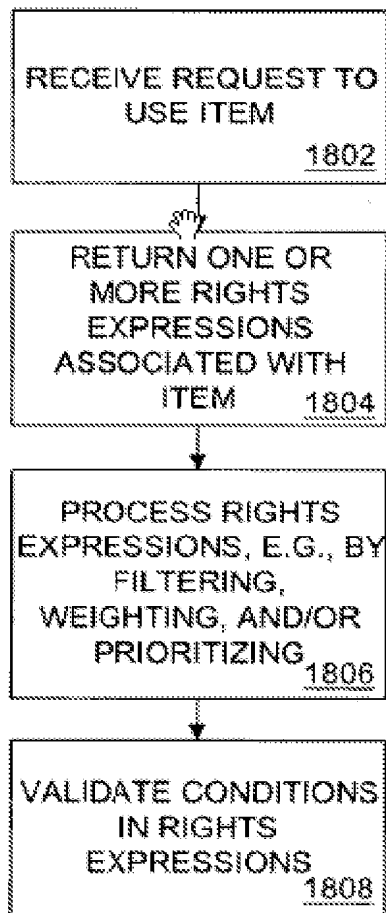1806

VALIDATE CONDITIONS IN RIGHTS EXPRESSIONS
1808

FIG. 18

Therefore, in view of the obvious deficiencies of Levitt set forth above, (including the fact that Levitt completely fails to relate to DRM in any significant capacity, much less to the claimed features of the pending claims related to rights expression language (REL) interpretation and/or processing in DRM systems), Appellants respectfully request that the rejections of the pending claims, including independent claims 1, 37, and 40, under 35 U.S.C. § 102(e) as being anticipated by Levitt be overturned. The dependent claims are also allowable over Levitt based on their own merits and for at least the reasons as argued above with respect to their independent claims.

Accordingly, Appellants submit that the rejection of claims 1-3 and 5-40 under 35 U.S.C. § 102(e) in view of Levitt should be overturned, and an indication of immediate allowability is respectfully requested.

Respectfully submitted,
NIXON PEABODY, LLP

Date: January 15, 2008

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VIII.   CLAIMS APPENDIX

1. (Previously Presented) A computer-implemented method for processing plural rights expressions associated with an item for use in a system for controlling use of the item in accordance with the rights expressions, the method comprising:

receiving a request to use the item, the item having associated rights expressions governing use of the item;

returning one or more rights expressions including one or more conditions that must be satisfied in order to use the item; and

processing the returned rights expressions in a manner to facilitate selection of the returned rights expressions in order to use the item in accordance with the selected rights expressions, and including:

prioritizing the returned rights expressions based on the one or more conditions of the returned rights expressions, so as to facilitate selection of the returned rights expressions.

2. (Original) The method of claim 1, wherein the returned rights expressions specify respective manners of use of the item.

3. (Original) The method of claim 2, wherein the conditions include conditions that must be satisfied in order to exercise the respective manners of use for the item.

4. (Cancelled)

5. (Original) The method of claim 4, wherein the prioritizing step further comprises:

employing a usage cost associated with enforcement of a condition of the prioritized conditions, wherein the usage cost includes at least one of a term usage cost associate with the condition, and a preference usage cost associated with a preference for enforcement of the condition.

6. (Original) The method of claim 5, wherein the prioritizing step further comprises:

employing the usage cost in combination with a preference for the enforcement of the condition.

7. (Original) The method of claim 4, wherein the prioritizing step is accomplished with a prioritizing plug-in application.

8. (Original) The method of claim 7, wherein the prioritizing plug-in application is configurable on a device.

9. (Original) The method of claim 4, wherein the returned rights expressions include a path comprising a chain of rights expressions, and the prioritizing step comprises:

recursively prioritizing each rights expression of the chain of rights expressions.

10. (Original) The method of claim 1, wherein the processing step comprises:

filtering one or more rights expressions from the returned rights expressions to facilitate selection of a rights expression.

11. (Original) The method of claim 10, wherein the processing step comprises:

prioritizing one or more conditions of the filtered rights expressions to facilitate selection of a rights expression.

12. (Original) The method of claim 10, wherein the filtering step is accomplished with a filtering plug-in application.

13. (Original) The method of claim 12, wherein the filtering plug-in application is configurable on a device.

14. (Original) The method of claim 10, wherein the returned rights expressions include a grant path comprising a chain of grants, and the filtering step comprises:

recursively filtering each grant of the chain of grants of the grant path.

15. (Original) The method of claim 1, wherein the returned rights expressions include a grant.

16. (Original) The method of claim 1, further comprising:
performing the processing step on a device in order to access the item with the device.

17. (Original) The method of claim 16, wherein the device comprises a handheld device.

18. (Original) The method of claim 16, wherein the device comprises a rendering device.

19. (Original) The method of claim 16, wherein the device comprises a general-purpose computer device.

20. (Original) The method of claim 1, wherein the rights expression information is grammar-based.

21. (Original) The method of claim 2, wherein the item includes one of digital content, a service, an abstract object, a resource, and goods.

22. (Original) The method of claim 6, wherein the usage cost and the preference are user-configurable.

23. (Original) The method of claim 6, wherein the usage cost and the preference are predetermined.

24. (Original) The method of claim 6, wherein the usage cost and the preference are initially set to default values.

25. (Original) The method of claim 6, further comprising:
prompting a user for values for the usage cost and the preference.

26. (Original) The method of claim 6, further comprising:

determining values for the usage cost and the preference based on an output from a neural network trained with previous input values from a user for the usage cost and the preference.

27. (Original) The method of claim 6, further comprising:

determining values for the usage cost and the preference based on an output from a neural network trained with previous input values from a plurality of users for the usage cost and the preference.

28. (Original) The method of claim 1, wherein the processing step includes at least one of filtering, weighting, and prioritizing steps for granting one of access to the item and permission to use the item.

29. (Original) The method of claim 28, wherein the filtering step includes filtering the returned rights expressions based on a filter profile.

30. (Original) The method of claim 29, wherein the filter profile includes filter criteria including at least one of a rights expression type, a minimum value, a maximum value, a rights expression type operator, a minimum value operator, and a maximum value operator.

31. (Original) The method of claim 1, wherein the processing step includes calculating condition term usage costs based on respective terms of the conditions.

32. (Original) The method of claim 1, wherein the processing step includes calculating condition usage preferences for the conditions based on a user preference profile including a list of respective condition type name and positive rank score value pairs.

33. (Original) The method of claim 32, further comprising fine tuning the user preference profile based on previous user selection of the rights expressions to exercise with the use of a selection strength index associated with each condition type.

34. (Original) The method of claim 33, further comprising employing a horizontal asymptotic function to ensure that the value of the selection strength index reaches a maximum value at a predetermined pace but does not exceed the maximum value.

35. (Original) The method of claim 5, wherein the term usage cost includes at least one of a usage cost corresponding to a fee associated with the access to the item, and a territory usage cost corresponding to a territory restriction with respect to the access to the item.

36. (Original) The method of claim 1, wherein the rights expressions include at least one of licenses and grants.

37. (Previously Presented) A system for processing plural rights expressions associated with an item for controlling use of the item in accordance with the rights expressions, the system comprising:

means for receiving a request to use the item, the item having associated rights expressions governing use of the item;

means for returning one or more rights expressions including one or more conditions that must be satisfied in order to use the item; and

means for processing the returned rights expressions in a manner to facilitate selection of the returned rights expressions in order to use the item in accordance with the selected rights expressions, and including:

means for prioritizing the returned rights expressions based on the one or more conditions of the returned rights expressions, so as to facilitate selection of the returned rights expressions.

38. (Original) The system of claim 37, wherein the means for receiving, the means for returning, and the means for processing comprise devices of a computer system.

39. (Original) The system of claim 37, wherein the means for receiving, the means for returning, and the means for processing comprise computer-readable instructions stored on a computer readable medium.

40. (Previously Presented) A device for processing plural rights expressions associated with an item for controlling use of the item in accordance with the rights expressions, the device comprising:

means for receiving a request to use the item, the item having associated rights expressions governing use of the item;

means for returning one or more rights expressions including one or more conditions that must be satisfied in order to use the item; and

means for processing the returned rights expressions in a manner to facilitate selection of the returned rights expressions in order to use the item in accordance with the selected rights expressions, and including:

means for prioritizing the returned rights expressions based on the one or more conditions of the returned rights expressions, so as to facilitate selection of the returned rights expressions.

IX.   EVIDENCE APPENDIX

There is no evidence related to this Appeal.

X.   RELATED PROCEEDINGS APPENDIX

There are no related proceedings to this Appeal.